IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/07/2003

Coram

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mrs. Justice R. BANUMATHI

A.S. No.593 of 1991
and A.S.No. 594 and 595 of 1991,
Cross Objection Nos.29 & 59 of 1995
and Cross Objection Nos.25 to 31 of 2003

A.S. No.593 of 1991 :

The Revenue Divisional Officer,
Periyar District,
Erode. .. Appellant

-Vs-

1. Athappa Gounder (died)
2. Chinnthamany Ammal (died)
3. Janaki Ammal
4. Dhanalakshmi Ammal
5. Chellappa Gounder
6. K.M. Karuppanna Gounder
7. Palani Gounder
8. Subramaniam (died)
9. Muthusamy
10. Chellappa Gounder (died)
11. Indirani Ammal
12. Rajammal
13. Palaniappan
14. Chengkottaian
15. Ramasamy
16. Chenniappa Gounder (died)
17. Maharaja Mudaliar
18. Govindan
19. Ponnusamy (died)
20. Madhava Panicker
21. Pathamuthu Beebi (died)
22. Palanisamy
23. Nallamuthu
24. Nallasamy Pillai
25. Arasappa Pillai (died)
26. Manickam Chettiar

27. Rajammal
28. Palaniappan
29. Kuppusamy
30. K.P. Kumarasamy
31. Subramaniam
32. K.P. Venkitusamy
33. Karuppanna Gounder
34. A. Rangasamy
35. Krishnasamy (died)
36. K. Manoharan
37. K. Bhaskaran

(RR-36 & 37 recorded as L.Rs. of deceased 35th respondent as per order of Court dt.28.7.2003 made in CMP 5713 of 2003 by PSMJ & RBIJ)

38. Bhunaveswari

39. The Executive Engineer and Administrative Officer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Erode.

(R-39 impleaded vide order of the Court dt.5.3.2002 made in CMP 5023 of 2001 by ARMJ)

40. S. Natarajan

(Brought on record as L.R. of deceased 10th respondent in CMPs.26 to 28 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

41. P. Mathiyazhagan

(Brought on record as L.R. of deceased 19th respondent in CMPs.29 to 31 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

42. S. Lakshmi
43. S. Kulandaisamy
44. S. Nagarajan

(Brought on record as L.Rs. of deceased 16th respondent in CMPs. 2124 to 2126 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

45. Duraisamy
46. Karuppayammal

(Brought on record as L.Rs. of deceased 1st respondent in CMPs.15872 to 15874 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

47. S. Sivasubramaniam
48. S. Surendiran

(Brought on record as L.Rs. of deceased 2nd respondent in CMPs. 15875 to 15877 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

49. Ponnammal
50. Gopalakrishnan
51. Jothi Pushpa
52. Dhanalakshmi
53. Suseela

(Brought on record as L.Rs. of deceased 8th respondent in CMPs.15878 to 15880 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

54. Kannammal
55. Shanmugavalli
56. Saraswathi
57. Thangammal

(Brought on record as L.Rs. of deceased 25th respondent in CMPs.15881 to 15883 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

58. B. Noorul Yehzan
59. B. Syed Rabia Beebi
60. Anwar Ali
61. Asraf Ali

(Brought on record as L.Rs. of

deceased 21st respondent in
CMPs.15884 to 15886 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003) .. Respondents

. . . .

A.S. No.594 of 1991 :

The Revenue Divisional Officer,
Periyar District,
Erode. .. Appellant

vs.

1. Athappa Gounder (died)
2. Chinnthamany Ammal (died)
3. Janaki Ammal
4. Dhanalakshmi Ammal
5. Chellappa Gounder
6. K.M. Karuppanna Gounder
7. Palani Gounder
8. Subramaniam (died)
9. Muthusamy
10. Chellappa Gounder (died)
11. Indirani Ammal
12. Rajammal
13. Palaniappan
14. Chengkottaian
15. Ramasamy
16. Chenniappa Gounder (died)
17. Maharaja Mudaliar
18. Govindan
19. Ponnusamy (died)
20. Madhava Panicker
21. Pathamuthu Beebi (died)
22. Palanisamy
23. Nallamuthu
24. Nallasamy Pillai
25. Arasappa Pillai (died)
26. Manickam Chettiar
27. Rajammal
28. Palaniappan
29. Kuppusamy
30. K.P. Kumarasamy
31. Subramaniam
32. K.P. Venkitusamy
33. Karuppanna Gounder
34. A. Rangasamy
35. Krishnasamy (died)
36. K. Manoharan

37. K. Bhaskaran

(RR-36 & 37 recorded as L.Rs. of deceased 35th respondent as per order of Court dt.28.7.2003 made in CMP 5714 of 2003 by PSMJ & RBIJ)

38. Bhunaveswari
39. Manicka Sundaram
40. K.R.P. Viswanathan

(R-40 impleaded as party respondent as per order of the Court dt.12.10.1995 made in CMP 12244 of 1995 by SJJ)

41. The Executive Engineer and Administrative Officer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Erode.

(R-41 impleaded vide order of the Court dt.5.3.2002 made in CMP 5023 of 2001 by ARMJ)

42. C. Sridharan
43. C. Sridharan

(R-42 brought on record as L.Rs. of the deceased 10th respondent; R-43 brought on record as L.R. of the deceased 8th respondent as per order of NVBJ & PTJ dt.26.3.2003 in CMPs 18268 and 18269 of 2002)

44. S. Natarajan

(Brought on record as L.R. of deceased 10th respondent in CMPs. 32 to 34 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

45. P. Mathiyazhagan

(Brought on record as L.R. of deceased 19th respondent in CMPs. 35 to 37 of 2003 by order of PSMJ & RBIJ dt.28.7.2003)

46. S. Lakshmi
47. S. Kulandaisamy
48. S. Nagarajan

(Brought on record as L.Rs. of
deceased 16th respondent in
CMPs. 2127 to 2129 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

49. Duraisamy
50. Karuppayammal

(Brought on record as L.Rs. of
deceased 1st respondent in
CMPs.15887 to 15889 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

51. Ponnammal
52. Gopalakrishnan
53. Jothi Pushpa
54. Dhanalakshmi
55. Suseela

(Brought on record as L.Rs. of
deceased 8th respondent in
CMPs.15890 to 15892 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

56. Kannammal
57. Shanmugavalli
58. Saraswathi
59. Thangammal

(Brought on record as L.Rs. of
deceased 25th respondent in
CMPs.15893 to 15895 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

60. B. Noorul Yehzan
61. B. Syed Rabia Beebi
62. Anwar Ali
63. Asraf Ali

(Brought on record as L.Rs. of
deceased 21st respondent in
CMPs.15896 to 15898 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003) .. Respondents

. . . .

A.S. No.595 of 1991 :

The Revenue Divisional Officer,
Periyar District,
Erode. .. Appellant

vs.

1. Athappa Gounder (died)
2. Chinnthamany Ammal (died)
3. Janaki Ammal
4. Dhanalakshmi Ammal
5. Chellappa Gounder
6. K.M. Karuppanna Gounder
7. Palani Gounder
8. Subramaniam (died)
9. Muthusamy
10. Chellappa Gounder (died)
11. Indirani Ammal
12. Rajammal
13. Palaniappan
14. Chengkottaian
15. Ramasamy
16. Chenniappa Gounder (died)
17. Maharaja Mudaliar
18. Govindan
19. Ponnusamy (died)
20. Madhava Panicker
21. Pathamuthu Beebi (died)
22. Palanisamy
23. Nallamuthu
24. Nallasamy Pillai
25. Arasappa Pillai (died)
26. Manickam Chettiar
27. Rajammal
28. Palaniappan
29. Kuppusamy
30. K.P. Kumarasamy
31. Subramaniam
32. K.P. Venkitusamy
33. Karuppanna Gounder
34. A. Rangasamy
35. Krishnasamy (died)
36. K. Manoharan
37. K. Bhaskaran

(RR-36 & 37 recorded as L.Rs.
of deceased 35th respondent as
per order of Court dt.28.7.2003
made in CMP 5715 of 2003 by
PSMJ & RBIJ)

38. Bhunaveswari

39. The Executive Engineer and
Administrative Officer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Erode.

(R-39 impleaded vide order of
the Court dt.5.3.2002 made in
CMP 5023 of 2001 by ARMJ)

40. S. Natarajan
41. P. Mathiyazhagan

(Brought on record as L.Rs. of
deceased 10th respondent in
CMPs. 41 to 43 of 2003 by order
of PSMJ & RBIJ dt.28.7.2003)

42. S. Lakshmi
43. S. Kulandaisamy
44. S. Nagarajan

(Brought on record as L.Rs. of
deceased 16th respondent in
CMPs. 2130 to 2132 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

45. S. Sivasubramaniam
46. S. Surendiran

(Brought on record as L.Rs. of
deceased 2nd respondent in
CMPs. 15902 to 15904 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

47. Duraisamy
48. Karuppayammal

(Brought on record as L.Rs. of
deceased 1st respondent in
CMPs. 15899 to 15901 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

49. Ponnammal
50. Gopalakrishnan
51. Jothi Pushpa
52. Dhanalakshmi
53. Suseela

(Brought on record as L.Rs. of
deceased 8th respondent in
CMPs. 15906 to 15907 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

54. Kannammal
55. Shanmugavalli
56. Saraswathi

57. Thangammal

(Brought on record as L.Rs. of
deceased 25th respondent in
CMPs. 15908 to 15910 of 2003 by
order of PSMJ & RBIJ dt.28.7.2003)

58. B. Noorul Yehzan
59. B. Syed Rabia Beebi
60. Anwar Ali
61. Asraf Ali

(Brought on record as L.Rs. of
deceased 21st respondent by order
of PSMJ & RBIJ dt.28.7.2003) .. Respondents

PRAYER : Appeals and Cross Objections against the judgment and decree dated 5.7.1990 on the file of the Subordinate Judge, Erode passed in L.A.O.P. Nos.13, 14 and 16 of 1984.

Appearance

!For Appellants : Mr. R. Muthukumaraswamy,
Additional Advocate General for
A.G.P. (A.S.) in the 3 appeals.

^For Respondents : Mr. N. Balasubramanian
[A.S. No.593/91] (RR.6,7,10,15,16,36 & 37)
Mr. G. Jawaharlal (R-3)
Mr. B. Soundarapandian (R-9)
Mr. S. Chandrasekar (R-21)
Mr. N. Manoharan (R-22)
Mr. R. Dhananjayan (RR.30 to 32)
Mr. V. Karthikeyan (R-19)(TNHB)
Mr. M.S. Ramesh (R-35)

[A.S. No.594/91] : Mr. B. Soundarapandian (R-9)
Mr. S. Chandrasekar (R-21)
Mr. N. Manoharan (R-22)
Mr. N. Balasubramanian (RR.19 & 39)

Mr. R. Dhananjayan (RR.30 to 32)
Mr. V.K. Nachimuthu (R-34)
Mr. V.K. Muthusamy,
Senior Counsel (R-40)
Mr. K. Doraisamy,
Senior Counsel (R-28)
Mr. V. Karthikeyan (TNHB)
Mr. N. Manoharan (R-42 & 43)
Mr. M.S. Ramesh (R-35)

[A.S. No.595/91] : Mr. G. Jawaharlal (R-3)
Mr. B. Soundarapandian (R-9)
Mr. N. Balasubramanian (RR.6,15,
16 & 22)
Mr. M.S. Ramesh (R-35)
Mr. K. Doraisamy,
Senior Counsel (R-38)
Mr. N. Manoharan (R-21)
Mr. R. Dhananjayan (RR.30 to 32)
Mr. V. Karthikeyan (R-39 TNHB)

For Cross Objectors in Cross : Mr. K. Manoharan
Objection No.29 of 1995

For Cross Objectors in Cross : Mr. S. Rajasekar
Objection No.59 of 1995 Mr. M.S. Ramesh

For Cross Objectors in Cross : Mr. S. Rajasekar
Objection Nos.25 to 31 of 1995 Mr. M.S. Ramesh

For the State in all : Mr. R. Muthukumaraswamy,
the Cross Objections Addl. Advocate General
for Mr. R. Asokan,
A.G.P. (A.S.)

:J U D G M E N T

P.SHANMUGAM, J.

The three appeals and the Cross Objections are filed against the Land Acquisition Awards passed in L.A.O.P. Nos.13, 14 and 16 of 1984 on the file of the Sub-Court, Erode, Periyar District. A total extent of 156.78 acres of land in Erode and Soorampatty Villages of Erode Taluk were acquired for the construction of houses under the Low Income Group and Middle Income Group Schemes and also for the construction of the Office of the District Collector as well as the District Court Building.

2. In the three appeals, we are concerned with three sets of L.A.O. Ps. The Notification under Section 4(1) of the Land Acquisition Act, 1894 was approved by the Government in G.O. Ms. No.156, Housing dated

27.2.1973 and published in the Tamil Nadu Government Gazette dated 1 4.3.1973. The following lands are covered under these L.A.O.Ps. as per the Reference by the Land Acquisition Officer :

L.A.O.P. No.13 of 1984 :

Survey (Field) No. Extent

412/15 0.09.5 (0.24 acres)

L.A.O.P. No.14 of 1984 :

Survey (Field) No. Extent

409/12 0.04.5
412/3 0.21.0
412/5B 0.09.5
412/12 0.70.0
412/17 0.08.5
412/19 0.05.0
413/14 0.06.5
412/8B 0.21.0
412/11B 0.00.5

Total Extent 1.26.5 Hectares (or) 3.13 Acres

L.A.O.P. No.16 of 1984 :

Survey (Field) No. Extent

409/3A 0.00.5 Ares (0.01 cent)

3. The Land Acquisition Officer/Revenue Divisional Officer, Erode passed an Award in reference to the above lands in Award No.1 of 1980 dated 29.2.1980 thereby determining the market value of these lands at Rs.2/- per sq.ft. and after deducting 20% towards the developmental charges, fixed the compensation at Rs.1/35 per sq.ft. The Land Acquisition Officer in all these awards has observed that the real owners have stated that the interested persons notified in the fields in question are the same persons notified as interested persons in R.S. Nos.409/1A and 409/2. The interested persons who appeared for the award enquiry could not say as to whom the fields belong. They have simply objected to the acquisition of the fields. Inasmuch as there is no documentary evidence to show the exact persons who own the above fields, the compensation could not be apportioned and paid to the proper interested persons. Therefore, in the absence of the real contesting parties, it was not safe to apportion the compensation between the persons. Hence, the compensation was ordered to be deposited in the Sub-Court under Section 30 of the Act. The Sub-Court has amended the word 'Section 30' as 'Section 18' as

per the order in I.A. No.183 of 1987 dated 3.12.1987. The Form of Reference sent to the court in Reference No.21444/74/A8 dated 4.8.1981 by the Land Acquisition Officer, viz. the Revenue Divisional Officer was made under Section 30 of the Act. However, it was ordered to be corrected and amended as one made under Section 18 of the Act on the basis of the order in I.A. No.187 of 1987 dated 3.12.1987. The letter was addressed by the Revenue Divisional Officer to the Principal Subordinate Judge in Reference No.2 1444/74/A8 dated 4.8.1981 wherein the subject of acquisition referred to in the Reference under Section 30 of the Act was corrected as one under Section 18 as per the amendment in I.A. No.183 of 1987 dated 3 .12.1987. However, the prayer in these Forms of Reference which state the reasons for Reference as follows :
"The interested persons could not say the share of each person in these lands. Hence, the compensation could not be apportioned and is deposited in court under section 30 of the Land Acquisition Act."
"I request that the Reference under Section 30 may please be taken on file and disposed of according to law."

In one of the Forms of Reference dated 4.8.1981, Section 30 has been replaced by Section 18 as per the amendment made in I.A. No.183 of 19 87 dated 3.12.1987. The learned Judge, amending the Reference under Section 30 as one under Section 18 of the Act, at the instance of the claimants in these three L.A.O.Ps., proceeded to consider the same under Section 23-A of the Act and enhanced the compensation to Rs.7/- per sq.ft. in all these cases. Aggrieved by the order/award passed by the Sub-Court, the Government has preferred the appeals. Insofar as L.A.O.P. No.14 of 1984 is concerned, the learned Judge enhanced the compensation from Rs.1,42,365/- as awarded by the Land Acquisition Officer to Rs.25,83,784/-. The appeals are against this order.

4. In the Memorandum of Grounds filed on 6.3.1991, the appellant/ Government has specifically pleaded in Ground Nos.3 to 6 as follows :
(4) The court below has exceeded its jurisdiction by treating the Reference under Section 30 as one under Section 18 and awarding the enhancement.
(5) The court below has failed to note that under the Land Acquisition Act, the claimants could claim enhanced compensation and could request the Collector to make a Reference under Section 18, if they are not satisfied with the compensation awarded by the Land Acquisition Officer and only if they give their request in writing to the Collector within the given time.
(6) The court below has failed to note that in this case, the claimants have not given any request in writing for claiming enhanced compensation under Section 18 of the Act and that is why no Reference under Section 18 was sent to the Sub-Court.
(7) The court below ought to have seen that only for the apportionment of the compensation amount, the matter was sent to the Sub-Court under Section 30 of the Land Acquisition Act and not for anything else."

The appellant has also questioned the enhancement on merits and the actual extent of land involved in the Reference.

5. The learned Additional Advocate General Mr. R.

Muthukumaraswamy submitted that the judgment of the learned Subordinate Judge is without jurisdiction, illegal and contrary to the law laid down by the Supreme Court. According to him, the learned Judge, after having accepted the value as shown in Ex.A.19, viz. the value as determined by this court in A.S. No.584 of 1986 dated 14.10.1989 in reference to the land just opposite to the lands under acquisition divided by National Highway Road, ought not have enhanced the compensation to Rs.7/- per sq.ft. He has submitted that Rs.5/- had been fixed as the correct market value after taking into account the potentiality of the land, etc. and the learned Judge has committed a serious error in once again duplicating and enhancing the compensation simply on the basis that the town is likely to expand and that there are a number of industries and also as there is a potentiality for the increase in the value of the land. He has also submitted that the learned Judge has not considered the actual extent of the lands acquired and the compensation awarded and he therefore prays for setting aside of the judgment of the Sub-Court.

6. Learned senior counsel Mr. V.K. Muthusamy and others fairly concede that there is no provision for amending the Reference under Section 30 as one under Section 18 of the Act. However, it is pleaded that inasmuch as one of the claimants has requested for a Reference by letter dated 9.5.1980, legal notice dated 9.1.1985 and a petition under Order VI, Rule 7 of the Code of Civil Procedure was also filed before the Sub-Court, which was ordered, other claimants are entitled to seek for an amendment in reference to their claims also. According to him, these amendments were not objected to by the learned Government Pleader appearing before the Sub-Court and hence the same were rightly considered. According to them, the acquired land has got an additional advantage and considering the development of the land in and around the acquired land, the enhancement at the rate of Rs.7/- per sq.ft. is reasonable and hence, it should be confirmed.

7. We have heard the counsel for either side and considered the matter carefully.

8. The appellants have raised a specific ground as set out above as to the want of jurisdiction on the part of the Sub-Court to convert a Reference under Section 30 into one under Section 18 of the Act. None of the claimants have chosen to file any additional documents to oppose the submission that the claimants have given requisition for enhancement and that on the failure to send a Reference, they moved the Sub-Court claiming enhanced compensation, assuming that such a course is permissible.

9. Section 12 of the Land Acquisition Act, 1894 says that an award passed by the Collector shall be final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and the value of the land and the apportionment of the compensation among the persons interested. Sub-section (2) of Section 12 says that the Collector shall give immediate notice of his award to such person interested as are not present personally or represented by their representative when the award is made. In this case, the award in Award No.1 of 1980 dated 29.12.1980 was served in person in January, 1980. The Reference under Section 30 of the Act also says

that the interested persons who appeared for enquiry were unable to say the share of each person in the field. As the shares of the persons in these fields could not be decided, the compensation was directed to be deposited into court deposit under Section 30 of the Act and thereafter, a Reference dated 4.8.1981 was made under Section 30 of the Act, the reason for the Reference being that the interested persons could not say the share of each person in these lands. Section 30 of the Act requires the Collector to refer the dispute as to apportionment. Therefore, there is no scope for considering the enhancement in a Reference under Section 18.

10. The requisite of the Reference under Section 18 is well known and Section 18 says that any person interested and who has not accepted the award may, by writing, require the matter be referred to by the Collector for determination of the court as to whether his objection, be it to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of compensation among the persons interested. Such an application with specified grounds shall be made within six weeks from the date of the Collector's award or within six months if notice is issued under Section 12(2) of the Act. Therefore, the requirements are that the person interested should not have accepted the award and there must be a written application to the Collector requesting him to refer the matter. That application should specify whether the objection is in reference to the determination of the amount, measurement of the land or as to whom it is payable. Thus, it could be seen that the scope of the Reference under Section 18 and the Reference under Section 30 is entirely different.

11. If a Reference had been made under Section 30, a separate Reference has to be sought for under Section 18 and that too must be made before the Collector in writing. The Reference under Section 30 having come to the Sub-Court to decide the question of the apportionment on account of the dispute between the sharers to whom it is payable, the Sub-Court cannot correct those reference letters or forms enclosed in those letters of reference and convert the Reference as one under Section 18. That would be not only without jurisdiction, but would be beyond the competence of the Sub-Court to do so. As it could be seen, in this case, the subject portion of the Revenue Divisional Officer's letter and last prayer portion of one of the References under Section 30 have been corrected as one under Section 18. Such a course is nothing but misuse of power and the provisions of amendment under Order VI, Rule 17 C.P.C. The court can only seek for an amendment of the pleading of the parties, and that too if necessary, for determining the real question in controversy between the parties. It is obvious that a reference/requisition to decide the dispute by the Revenue Divisional Officer cannot be construed as a petition of the claimant to amend it at their instance and secondly, the requisition being one under Section 30 which would decide the question in controversy, viz. the dispute between the parties, it cannot go beyond the scope of Section 30. It is unfortunate that the Sub Judge did not appreciate the legal implications arising out of his order.

12. For all these reasons, we are of the view that the course adopted by the learned Sub Judge is to be held as one without jurisdiction and the learned Judge is not competent to go into the question. In the preamble

portion of the judgment, which is not paragraphed, the learned Judge has stated that the Land Acquisition Officer has sent Award No.1 of 1980 dated 22.9.1980 under Section 30 and consequently, the award was taken on file and while so, the claimants have filed applications to enquire the said Reference under Section 18 of the Act and therefore, the request of the Collector has been altered into one under Section 18 of the Act. It is not clear whether notice was ordered to the appellant. The copy of the order in I.A. is not seen in the files and none of the parties are able to produce a copy.

13. In Kanagarathinam & Others vs. State of Andhra Pradesh [1964 (6) S.C.C. 294], the very question was posed before the Supreme Court, viz. when there is no reference to the court on the question of quantum of compensation, whether the court is competent to deal with such matters even though there was no objection to the proceedings before the court by the State. The Supreme Court has held as follows :
"(i) On consideration of the relevant provisions contained in Section 18 of the Land Acquisition Act, the jurisdiction of the court arises solely on the basis of a reference made to it. Wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise. Therefore, it was a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference insofar as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.
(ii) The court had no jurisdiction to determine the amount of compensation and thus go behind the order of the Land Acquisition Officer."

14. In Ajam Linganna vs. Land Acquisition Officer [2002 (2) S.C.C. 4 26], their lordships of the Apex Court have held that it is not open to the claimant to apply directly to the reference court for impleadment and seek enhancement under Section 18 for compensation and accordingly found that the appeals preferred by the various appellants are liable to be dismissed inasmuch as it was not open to the reference court to implead the said appellant without the Land Acquisition Officer seeking for a reference. In that case, their lordships made a concession in reference to one of the claimants who had filed an application before the Land Acquisition Officer under Section 18 of the Act and the Land Acquisition Officer did not take any action upon the application filed by the said claimant. Therefore, their lordships observed, "Some consideration can be shown". However, it is not the law laid down by the Supreme Court that a person who had not filed a written reference application can come to the court directly for enhancement of compensation.

15. As rightly pointed out, insofar as the claimant P. Janakiammal is concerned, after the arguments of the learned Additional Advocate General were completed and at the stage of reply, a typed set was filed before this court containing an application said to have been filed on

9.5.1980. But, strangely, there is no acknowledgment for the same. Besides, in the legal notice dated 9.1.1985 issued by a counsel after five years, what is stated is that an objection was raised during the award enquiry, but there was no reference under Section 18. This application, which is said to have been given on 9.5.1980, has not been referred to in the notice or the counter statement filed by the fourth claimant. The claimant P. Janakiammal is also said to have filed an I.A. On 22.4.1985. As mentioned earlier, the appeals are preferred in the year 1991 raising specific grounds as to the competency of the reference court to convert the application under Section 30 into one as under Section 18 of the Act. Till date, no application to receive any additional document has been filed. Hence, none of these documents filed on behalf of the claimants can be looked into at this stage and they do not for part of the records and cannot be considered for the reasons stated above.

16. The Privy Council, in Pramatha Nath vs. Secretary to State [A.I.R. 1930 P.C. 64], has held that the jurisdiction of the courts under the Land Acquisition Act is a special one and is strictly limited by the terms of Sections 18, 20 and 21. I rises when a specific objection has been taken to the Collector's Award, and it is confined to a consideration of that objection. Once, therefore, it is ascertained that the objection taken is only to the amount of compensation, that alone is the "matter" referred, and the court has no power to determine or consider anything beyond it, e.g. question of measurement raised for the first time three years after the Reference was duly made by the Collector.

17. In a recent decision of the Supreme Court in Prayag Upnivesh Awas Evam Nirman Sahkari Samiti vs. Allahabad Vikas Prabhikaran [2003 (3) C.T.C. 60], the Supreme Court has laid down that the civil court gets the jurisdiction only if the matter is referred to it under Sections 18 or 30 of the Act by the Land Acquisition Officer and the civil court had no jurisdiction or authority to decide an objection referred to it. The civil court could not widen its jurisdiction or decide the matters which are not referred to it. Their lordships referred to the decision in Anjan Linganna's case cited supra for the proposition that the reference court has no power to convert a reference under Section 30 to one under Section 18 of the Act at the instance of those who did not apply for the reference earlier.

18. Applying the above ratio laid down by the Supreme Court and the provisions of the Land Acquisition Act, it is crystal clear that the amendment of the Reference under Section 30 by the Reference Court as one under Section 18 is wholly without jurisdiction and that the civil court is not competent to do so by an amendment order and hence, the judgment and decree of the court below in the L.A.O.Ps. is liable to be set aside on that ground.

19. On merits, it is seen that the learned Subordinate Judge has stated that the value as shown in Ex.A.19, a judgment of this Court in A.S. No.584 of 1986, can be accepted to be applicable to the lands under acquisition. In page 8 of the printed copy of the judgment, the learned Judge has stated that the notification under Section 4(1) of the Act is dated 14.3.1973 in reference to Survey No.113/2 (T.S. No.72), Soorampatty Village,

Erode Taluk and hence, the value fixed by the High Court can be accepted. Having said so, the learned Judge has proceeded to state that there is potentiality for the development of the acquired lands and therefore, the value can be enhanced from Rs.5/- to Rs.7/-. We find that except for a general assessment, there is no independent consideration in reference to this enhancement.

20. In our view, the Sub-Court has correctly relied on the judgment of this Court in A.S. No.584 of 1986. That was an appeal under Section 54 of the Land Acquisition Act filed as against the order of the Sub-Court in L.A.O.P. No.32 of 1982. In that case, an extent of 83,47 4 sq.ft. of lands in R.S. No.113/2 (T.S. No.72), Soorampatty Village, Erode Taluk were acquired as per the notification under Section 4(1) of the Land Acquisition Act dated 14.3.1973. The value was fixed by the Land Acquisition Officer in that case as Rs .1/34 per sq.ft. On appeal by the claimants, the High Court has enhanced the value to Rs.5 /- in the first appeal. While doing so, the High Court relied on the sale deed dated 12.2.1973, Ex.R.5 in that case in reference to the very same survey number, i.e. T.S. No.72 sold for Rs.10,000/-, which worked out to Rs.2/- per sq.ft. The High Court found that the property conveyed under Ex.R.5 was situated adjacent to the East - West Road running between Erode and Coimbatore and the properties were located in Soorampatty which is very near to Erode Town. According to the Division Bench, the evidence disclosed that industries have come up near the vicinity of the acquired land, but facilities like water supply and drainage appear to be lacking. Though the acquired land could not be regarded as being located in an important locality in Erode Town itself, it is so located so as to be considered as forming part of Erode Town, though outside the Municipal limits. The evidence in that case also revealed that the Court House and other important Government buildings have been built just opposite to the acquired land (Incidentally, the lands in question in this case are acquired for that very purpose). There has been a tremendous escalation of prices of property in Erode Town and its surroundings and therefore, considering all these factors, the High Court fixed the market value of the land under acquisition at Rs.5/- per sq.f.t as representing the fair, just and reasonable amount. The lands under acquisition in our case are situated just opposite to R.S. No.113/2 and these lands were acquired for the purpose of construction of court buildings and the notification under Section 4(1) of the Act are of the same period, i.e. one month earlier. Thus, the Sub-Court, having found that the value as shown in this document can be accepted and applied to the case on hand, has again given further allowance for the potentiality of the land, which is clearly erroneous. The Division Bench, while enhancing the value from Rs.1/35 to Rs.5/- in that case, had taken into account the escalation of prices of land in the locality, the nearness of the land to the town and its potentiality etc.

21. In State of Haryana vs. Ram Singh [2001 (3) C.T.C. 368], the Supreme Court has held that "Market Value" means exactly what it says, viz. price which the asset would or could be expected to fetch in the open market. "Potential Value" of land and "Market Value" of land are not two different concepts and potentiality forms part of market value. Once market value is determined taking into account the potentiality of the property to be put for

a more profitable use, there can be no separable award for potential value. As rightly pointed out by the learned Additional Advocate General, the market value, including the potentiality, the possibility of growing into a big down and the land being put to use has been taken into account while the land just opposite but only divided by the N.H. Road was considered and the value was fixed at Rs.5/- in A.S. No.594 of 1986 (L.A.O.P. No.14 of 19 84). The learned Sub Judge, simply on the basis of potentiality, has enhanced the market value without any further consideration or as to why a different value has to be fixed than that of the one which covered the lands under Ex.A.19. The only reason now submitted on behalf of the respondents that there is one more road beyond the lands that were acquired and that therefore it has got a better facility cannot accepted. We have gone through the topo sketch and the evidence and we do not find that any importance can be attached on the basis of that road to say that the lands in question have got an extra facility.

22. The appellants have stated in Ground Nos.11, 12 and 13 that insofar as L.A.O.P. No.14 of 1984 is concerned (A.S. No.594 of 1991), the land that was acquired was only 1.26.5 hectares = 3.13 acres. The Reference under Section 30 of the Act, which was amended to one under Section 18 by the Land Acquisition Officer, is only as regards 1.26.5 hectares (3.13 Acres) in Survey Nos.409/12, 412/3, 412/5B, 412/8B, 4 12/11B, 412/12, 412/17, 412/19 and 413/4 - Government Dry. Though the Reference was confined to the apportionment of the award, there was no dispute regarding the extent of the lands involved. Therefore, the decree awarding compensation for 3.48.0 hectares, in our view, will be beyond the jurisdiction of the civil court. A specific objection was taken in the grounds, but no reply or explanation is offered per contra. Hence, we hold that the award could be only in respect of the lands that were acquired under Section 4(1) of the Act and referred under Section 30 of the Act, and the determination of compensation for any lands other than those referred is not sustainable and to that extent, the appeals are allowed.

23. For all the above reasons, we find that the judgment of the Sub-Court enhancing the compensation to Rs.7/- is to be set aside and accordingly it is set aside. The appeals are allowed. The cross objections are dismissed. However, there will be no order as to costs.

The C.M.Ps. seeking to condone the delay, to set aside the abatement and to bring on record the legal representatives are ordered.

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Index : Yes
Internet : Yes

To

1. The Subordinate Judge,
Erode (With Records).

2. The Record Keeper,
V.R. Section,
High Court, Chennai.